OFFICE OF THE POLICE COMMISSIONER
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February 5, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer John Eaton**
Tax Registry No. 932591
106 Precinct
Disciplinary Case No. 2010-1342

The above named member of the service appeared before Assistant Deputy Commissioner David S. Weisel on April 18, 2012 and was charged with the following:

DISCIPLINARY CASE NO. 2010-1342

1. Said Police Officer John Eaton, assigned to the 106th Precinct, while on-duty, on or about December 8, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that after becoming aware that Police Officer Person A was attempting to misuse Department resources by importuning Traffic Enforcement Agent Person B to issue a traffic summons to another Member of the Service, Lieutenant Person C, under false pretenses, Police Officer Eaton did fail and neglect to prevent such misuse.

P.G. 203-10, Page 1, Paragraph 5 — **PUBLIC CONTACT- PROHIBITED CONDUCT**

2. Said Police Officer John Eaton, assigned to the 106th Precinct, while on-duty, on or about December 8, 2009, after having become aware of an allegation of corruption or other misconduct involving a Member of the Service, Police Officer Person A, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1 — **ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBERS OF THE SERVICE**

DISCIPLINARY CASE NO. 2010-1342 **POLICE OFFICER JOHN EATON**

In a Memorandum dated August 9, 2012, Assistant Deputy Commissioner David S. Weisel found Police Officer Eaton Not Guilty of Specification No. 1 and Guilty of Specification No. 2, in Disciplinary Case No. 2010-1342. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty. Police Officer Eaton's misconduct in this matter warrants the forfeiture of twenty (20) vacation days as a disciplinary penalty.

Raymond W. Kelly
Police Commissioner

The City of New York

POLICE DEPARTMENT

August 9, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer John Eaton
Tax Registry No. 932591
106 Precinct
Disciplinary Case No. 2010-1342

The above-named member of the Department appeared before the Court on April 18, 2012, charged with the following:

1. Said Police Officer John Eaton, assigned to the 106th Precinct, while on-duty, on or about December 8, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, in that after becoming aware that Police Officer Person A was attempting to misuse Department resources by importuning Traffic Enforcement Agent Person B to issue a traffic summons to another Member of the Service, Lieutenant Person C, under false pretenses, Police Officer Eaton did fail and neglect to prevent such misuse.

P.G. 203-10, Page 1, Paragraph 5 PUBLIC CONTACT PROHIBITED CONDUCT

2. Said Police Officer John Eaton, assigned to the 106th Precinct, while on-duty, on or about December 8, 2009, after having become aware of an allegation of corruption or other misconduct involving a member of the service, Police Officer Person A, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Page 1, Paragraph 1 ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBERS OF THE SERVICE

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office. Respondent was represented by Michael Martinez, Esq., Worth, Longworth, & London, LLP.

Respondent, through counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1 and Guilty of Specification No. 2.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Joseph Kopack as a witness. Also submitted were the official Department interview of former Police Officer PersonA and a statement of Traffic Enforcement Agent Person B.

Sergeant Joseph Kopack

Kopack had been assigned to the 106 Precinct for approximately ten years. On December 8, 2009, he was assigned as the desk officer on the 4x12 tour. During his tour, Lieutenant Person C approached Kopack, holding a traffic summons Person C had received on his personal vehicle. Person C informed Kopack that he had been parked within the command's self-enforcement zone (SEZ), on 102nd Street and Liberty Avenue, in the vicinity of the 106 Precinct. A SEZ was an area in which traffic enforcement agents (TEA) generally were to abstain from issuing summonses because the precinct itself would enforce any traffic regulations within that area. The idea was that Department members assigned to the precinct

could park near the station house in spots that otherwise might be summonsable. Community complaints for abuse of the privilege could be addressed directly to the precinct.

Person C handed Kopack the summons he received (Department Exhibit [DX] 3). The summons was issued at 1657 hours. The comment section stated that the traffic agent had been "asked to issue summons by patrol car from 106 pct #4702." Kopack checked the roll call and saw that radio motor patrol (RMP) car number 4702 was assigned to Respondent and Police Officer Person A that day. Kopack did not know which of them was the operator.

Kopack then called the radio dispatcher by telephone and asked that Person A and Respondent be told to 10-1, or call the command. They were to call him at the desk. Kopack first received a call from Person A. He asked Person A if he had any knowledge of a member of the service being issued a summons in the area around the 106 Precinct, or had any interaction with "the traffic agent." Person A responded that he had not.

Approximately five to ten minutes later, Kopack received a call from Respondent informing him the summons was "a joke." It was a short and brief conversation.

Kopack informed Person C of "the phone call." Kopack believed that Person C then informed the commanding officer.

On cross examination, Kopack agreed that the SEZ was set up "because during tours there's a lot of cars that change."

Kopack was informed that Person C had parked halfway in a crosswalk. Kopack agreed that this was not a legal parking space. No rule allowed precinct personnel to park in such a space.

Kopack acknowledged that Person C was upset because an RMP had directed a TEA to issue him a summons in an area in which TEAs were not supposed to do so. Person C wanted to know who had directed the agent to issue the summons.

Kopack agreed that either Person A or Respondent could have responded to the direction to call the command. Kopack admitted that he did not ask to speak to Respondent after Person A denied having spoken to the TEA and directing her to issue the summons. Although Respondent was vague in his subsequent conversation, he did inform Kopack that he and Person A were involved in the incident and that it was a joke.

Kopack supervised both Person A and Respondent. According to Kopack, Respondent always did his job. He never had any problems with Respondent or needed to discipline him. He did not have any knowledge of Respondent being a "practical joker" or "some kind of clown in the precinct," but Kopack did not interact with Respondent in a manner in which Respondent would joke with him in such a way. As far as work was concerned, Kopack never had any problems with Person A always did his job too.

When Kopack spoke to Person C after speaking with Respondent, he informed Person C that while Person A had denied the incident, Respondent called and confirmed that it was their unit that was involved. As far as Kopack knew, Person C notified the commanding officer and the Internal Affairs Bureau (IAB). The investigation, nevertheless, took place at the precinct level via the integrity control officer.

Statement of TEA Person B

Person B was not called as a witness, but the parties stipulated to what she would have said if she had testified:

On December 8, 2009, while Person B was covering Liberty Avenue between Woodhaven Boulevard and 116th Street, she was approached by two members of the service from the 106 Precinct. The two approached her in a marked RMP at approximately 1650 hours while on Liberty Avenue between 106th and 107th Streets. They informed her of a green sport utility vehicle (SUV) parked in a crosswalk at 102nd Street and Liberty Avenue. One of the officers stated that residents had complained about the parking issue; both of them, said the officer, had run out of summonses. As such, one of the officers asked Person B to issue the summons to the vehicle.

The operator of the RMP informed Person B that the vehicle in the crosswalk did not belong to their "squad." The RMP then drove away and Person B walked toward the location of the SUV. She observed the described vehicle and issued a summons because the rear of the vehicle was within the lines of the crosswalk. She knew that the area was a SEZ and attempted to call her command for further instruction but received no answer. She then included in the comment section of the summons that it had been issued as a result of instructions from members of the service. She did this because she was unsure whether she was permitted to issue the summons due to the SEZ.

Official Department Interview of Person A (see DX 5 & 5a, recording and transcript, respectively)

Person A was served with charges and specifications, including false statements with regard to the instant matter and getting the TEA to issue the summons under false pretenses. He pleaded Guilty in exchange for a recommendation of the forfeiture of 30 suspension days to be served, 15 vacation days, and placement on one year of dismissal probation. He also agreed to

file for vested-interest retirement from the Department (Person A had a disciplinary history). The disposition was approved. See *Case No. 2010-1095* (Dec. 1, 2010).

Person A was interviewed on January 21, 2010. In this synopsis, the individual named by Person A as his partner has been indicated as Respondent.

Person A stated that on December 8, 2009, he was assigned to the 106 Precinct where he had been for approximately 12 to 12 ½ years. He was working in the afternoon and evening that day, assigned to a sector in RMP 4702 with a partner. Person A was the operator. He admitted that when he went out on patrol that day, he had the appropriate amount of summonses.

At approximately 1615 hours, at what Person A believed was 107th Street and Liberty Avenue, the two officers came across a female traffic agent. Person A and his partner approached her. Person A directed her to issue a summons to an SUV parked approximately three or four feet into a crosswalk at 102nd Street and Liberty Avenue. He was aware that Person C owned the vehicle at the time. Person A told the agent that if she needed to write summonses, there was a parked car in the crosswalk at 102nd and Liberty.

Person A knew that it was Person C's car because he had seen him in the car before and recognized the car's vanity plate. He made the decision to have the summons issued because he had had prior "run ins" with Person C and he was not "thinking straight." Person A characterized his decision to make such a request as poor judgment.

Person A believed that he partook in most of the conversation with the traffic agent. Person A did not provide her with a description of the car. Person A had never directed a traffic agent to issue a summons in that area prior to that date. It was Person A's idea to confront the traffic agent and request the summons be issued to Person C's car. Person A stated that he never thought she actually was going to issue the summons.

Person A claimed to be unaware that the area around the station house was the 106 Precinct's SEZ. Rather, he believed that the SEZ was 101st Street (the 106 Precinct station house is located on 101st Street north of Liberty Avenue). Person A admitted that he parked his car on 102nd Street and did not expect to receive a summons at that location.

According to Person A, the traffic agent did not inquire into whether the car belonged to a Department member. He denied informing her that the vehicle did not belong to a Department member. There was no parking plaque on the vehicle.

Person A was unsure whether he informed the traffic agent that the reason he wanted her to issue the summons was because he was out of summonses. He admitted, though, that he issued summonses that day.

Later that day, Person A was instructed to call the command with regard to the summons. At that point, Person A informed Kopack that he had not interacted with the traffic agent during his tour. Person A blamed this on poor judgment as well.

Person A asserted that he recanted this story a few minutes after speaking with Kopack. Person A was pumping gas and did not want to talk on his cell phone. "It was joke [sic]. Because he said he received, he said that, uh, –. If they say it was a joke, summons I'll forget about it." Person A told Respondent that he and Person C did not really get along. Thus, Person A had Respondent call Kopack, blame the event on Person A, and tell Kopack it was a joke. They called Kopack at 1930 hours, informed him that it was a joke, and "that was it."

Respondent's Case

Respondent testified on his own behalf.

Respondent

At the time of trial, Respondent had been the property officer at the 106 Precinct for over a year and a half. He had been assigned to the 106 Precinct nearly for the entirety of his career and never had been less than full duty status. He applied for the property officer position and received it due to his extensive computer background. He worked at a network operations center for an Internet technology company prior to joining the Department. His background became relevant after the property system changed from the carbon copy and typewriter system to a 21st century computer software system.

Before Respondent became the property officer, he worked patrol on the 4x12 tour. On December 8, 2009, he was assigned to work with Person A Respondent was the recorder that day. Early in the tour, Person A pointed Person C's car out to him and made a comment about it. Respondent stated that Person A and Person C did not get along very well. Person A previously had told Respondent that he believed Person C had "ratted him out," possibly regarding off-duty employment. Respondent, however, did not have any problems with Person C, who was the special operations lieutenant. They had no relationship other than Person C being a supervisor of Respondent.

Respondent had worked with Person A "[a]pproximately one time" before. Respondent knew Person A but was not friends with him and had never socialized with him. Respondent described him as "a loudmouth, a braggart." Respondent "really didn't take what he had to say to heart," noting that in his opinion, Person A "was just a zero."

Approximately one hour into the tour, Person A abruptly pulled the car to the side of Liberty Avenue and rolled down Respondent's window. Person A spoke to a female uniformed TEA, Person B. Respondent did not know her and was unaware if Person A did, although it was normal for a police officer to converse with TEAs during a tour. Respondent "half listened" to PersonA's conversation. Person A mentioned that there was a vehicle parked around 102nd Street and Liberty Avenue and that if she needed summonses, that would be a good place for her to start. This was where they had seen Person C's vehicle

Person A did not give Respondent any advance notice that he would pull the car over. Respondent did not remember Person A stating anything regarding either one of them being out of summonses, but Respondent did have summonses on him at the time. Respondent was aware that in the location Person A provided, any summonses issued would be handled by 106 Precinct officers rather than traffic agents because it was a SEZ.

According to Respondent, Person B appeared as if she "didn't really want to give [Person A] the time of day" and did not believe what he was telling her. Respondent stated that the conversation lasted approximately ten to twenty seconds. During that time, Respondent contended, he did not realize exactly what Person A was doing.

After leaving Person B, the two officers responded to jobs. Respondent issued a parking summons to a vehicle for lack of commercial plates when it was being used for commercial purposes.

The radio dispatcher informed Respondent's unit that they had to call the command. At the time, the officers were out of their vehicle at the intersection of Lefferts Boulevard and Jamaica Avenue. They had been on their way to the 102 Precinct for fuel, but noticed a large truck stuck in the intersection under the elevated train tracks there.

Upon hearing the 10 1, Person A lifted his phone to his ear but Respondent was unable to hear what he said. A few minutes later, Person A rushed over to Respondent, saying "no good or NG." Respondent questioned Person A as to what he meant and Person A stated, "[T]he traffic agent wrote his car, the traffic agent wrote the car."

At that moment, Respondent testified, "it went off like an alarm in my head" and he realized what Person A had done.

Respondent agreed that Person A told "the sergeant" that "it wasn't [our] unit" and denied participating in the incident. Respondent was not listening to Person A much after that point and wanted nothing to do with him or what he was "trying to pull."

When Person A informed Respondent of what had occurred, he thought about how Person A had lied to a supervisor and that "there were going to be a lot of people pissed." Respondent "took it upon myself to call the desk and straighten everything out." He called Kopack "immediately" and told him that while he himself had nothing to do with the situation, Person A was joking. Kopack told Respondent to 10-2, physically return to the command.

Respondent did not stop Person A during his conversation with the TEA because Respondent "did not really get what he was getting at." Looking back at everything that unfolded he realized what Person A was trying to do, but at that time he was unable to process it. Had Person A given Respondent any indication of what he was planning, Respondent would have told him not to do it and he would have told Person B to disregard anything Person A had told her. It did not become clear to Respondent what Person A had done until Person A informed Respondent that he essentially had been caught and denied his actions to Kopack.

Respondent did not notify IAB about the situation because he notified the desk officer who then told him there would be an investigation. As such, Respondent believed that the

"powers that be" were informed of the situation. The entire command was aware of what happened.

On cross examination, Respondent admitted he was aware prior to December 8, 2009, that Person C drove a green SUV with vanity plates. Respondent did not agree that the car was distinctive otherwise, but stated that the plate was meant to spell out "[redacted]" (i.e., Person C was a Jets fan).

Respondent agreed that when Person A pointed out Person C's car and commented on how it was parked, Respondent was aware that Person A was pointing out that a Department member with whom Person A did not get along was parked illegally.

Respondent admitted that he said in his official Department interview that Person A pulled the RMP over about one minute after pointing out Person C's vehicle. Respondent explained the discrepancy by noting that while he "was given all the facts and I knew exactly what was going on afterwards," the time period "seemed longer to me in retrospect."

Respondent also admitted stating in his interview that Person A told Person B that they were out of summonses. Respondent only made this statement because he had been given the facts many times by his supervisors and by Person A. Respondent admitted that Person A probably made the statement.

Respondent admitted that Person A informed Person B that the vehicle to which he directed her did not belong to a member of the service. Respondent knew the TEA would be aware that the area in which the car was parked was a SEZ, which was why he didn't take Person A's statements "to heart." Respondent did not give much thought to Person A's statement that the illegally parked car did not belong to a member of the service because there would have been a

plaque in the window for Person B to see so she wouldn't write the ticket. He was aware, however, that Person A was lying when he made that statement.

Respondent never indicated to Person B that she should not take Person A seriously. He agreed that he assumed she would understand it was a joke, although Person A was not laughing when he made "the statement."

Respondent testified that during the hour between Person A's conversation with the TEA and the 10-1, it never occurred to him that Person A's lie to her could have constituted misconduct. He only realized this when Person A told him that he had called the command and disclaimed involvement. Respondent admitted, however, stating in his official interview that after Person A spoke with Person B, he could not believe what Person A had done.

Stipulations

It was stipulated that Person C pleaded guilty to the charge on the summons and paid the fine. As of March 23, 2010, at 1412 hours, the balance of the ticket had been paid. The fine was $115, there was an additional penalty of $10, a subsequent reduction of $10 and finally a payment of $115 (see DX 4, receipt).

FINDINGS AND ANALYSIS

Specification No. 1

The instant case involves a prank played on Lieutenant Person C, the special operations lieutenant at the 106 Precinct. It was not disputed that the impetus behind the prank was now-former Police Officer Person A. Person A did not get along with Person C; he felt that the lieutenant had reported him for unauthorized off-duty employment.

On the day of the incident in question at trial, December 8, 2009, Respondent and Person A were partners. They were assigned to patrol in an RMP. Person A was the operator and Respondent was the recorder. According to Respondent, they were not friends and Respondent did not like Person A. He saw him as a loudmouth.

Person A and Respondent passed Traffic Enforcement Agent Person B (also spelled in the record as Person B), who was on duty in the area of 107th Street and Liberty Avenue. Person A saw Person C's personal automobile parked at 102nd Street and Liberty A venue. It was recognizable for its vanity plate showing Person C to be a Jets fan. Person A told Person B that she should summons the vehicle if she was looking for summons activity. Person A told her that the vehicle was not within the 106 Precinct's self-enforcement zone, meaning the area where complaints about parking were handled by the command itself because they were more likely the personal or Department vehicles of members assigned to the command. In other words, Person A was telling Person B that the vehicle did not belong to a Department member. In fact, he specifically told that to Person B. Person A added that he and Respondent were out of summonses, so they could not issue one to the car. Respondent testified that he was not really listening to what was going on.

Person C saw the summons on his car and went back to the 106 Precinct station house. Person B had written on the form that she was "asked" by RMP number 4702 from the 106 Precinct to issue the summons. Person C complained about the matter to Kopack, the desk officer. It was determined that Person A and Respondent were assigned to the RMP in question. They were told to call the command. Respondent testified that he called Kopack and told him that it was a joke played on Person C.

The first specification charges Respondent with conduct prejudicial to the good order, efficiency or discipline of the Department, in that after becoming aware that Person A"was attempting to misuse Department resources by importuning" Person B to issue a summons to Person C "under false pretenses," Respondent "did fail and neglect to prevent such misuse."

It was not disputed that Respondent was not involved in this prank other than being present and the partner of the culprit. The Department argued that Respondent was required to stop Person A from telling Person B to issue the summons by instructing her that Person A was joking.

The Court rejects as not credible Respondent's claim that he was not paying enough attention to PersonA's conversation to realize what he was doing. When Person A and Respondent were instructed to call the command, and Person A responded, Respondent thereafter called the desk and said that it had been a joke. He must have been listening enough to know what Person A had been doing if he reported it to Kopack and the Court does not credit his claim that he suddenly realized what was going on. He also admitted that Person A "probably" said that both officers were out of summonses.

Nevertheless, there was not much that Respondent could have done to stop Person A from misusing Person B to issue a summons to Person C. This was not a failure to supervise, as Respondent was not PersonA's supervisor; they were of equal rank. Person A was the operator of the RMP, so Respondent could not have driven away. He could not have intervened physically other than to cup his hand over PersonA's mouth or getting out of the RMP and creating a physical barrier between Person A and Person B.

The Court can find no authority, and the Department has pointed to none, that would establish the proposition that Respondent was required by the Patrol Guide to prevent Person A from committing misconduct. Doing so would have been fraught with the potential for a physical

confrontation. The Department suggested that Respondent should have spoken up and told Person B that Person A was lying or kidding around. The Court does not say that Respondent should not have said something; he should have. But that is not what he is charged with. Therefore, he is found Not Guilty of "fail[ing] and neglect[ing]" to prevent Person A's misconduct, which is Specification No. 1 as written.

Specification No. 2

The second specification charges that Respondent failed to notify IAB "after having become aware of an allegation of corruption or other misconduct involving a member of the service," Person A. The Department explained that the specification was predicated on Respondent's alleged failure to notify IAB that Person A lied to Person B in order to induce her to issue the summons under false pretenses. These lies were three: that the vehicle did not belong to a member of the service; that it was not in the 106 Precinct's self-enforcement zone; and that Person A and Respondent were out of summonses. Respondent contended that he reported the incident when he informed Kopack that it had been a prank on Person A's part.

The Court disagrees. It was fairly obvious that someone had been trifling with Person C when he found a summons on his vehicle, and the summons said that it was given at the direction of 106 Precinct personnel. Respondent was not telling Kopack more than already was known. Respondent was not obligated only to tell his supervisors that Person A was behind the ticket. In fact, Respondent argued at trial that it was not misconduct for Person A to tell Person B to summons Person C because, in fact, he was parked illegally. The Court finds that Respondent also was required to notify IAB that an on-duty police officer had lied to an on-duty traffic agent in order to induce her to issue a summons, which she otherwise would not have issued, to a disliked

member of the service. Because it is not disputed that Respondent failed to tell IAB about Person A's lies to Person B, Respondent is found Guilty of Specification No. 2.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 1, 2003. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

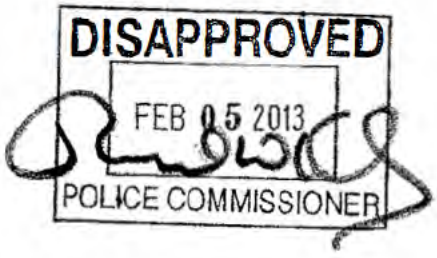
Respondent has been found Guilty of failing to report another's misconduct to IAB. Respondent's partner, Person A, told several lies to a traffic enforcement agent in order to get her to issue a summons to the private vehicle of a lieutenant. Person A was playing a prank on the lieutenant. When the lieutenant found out, and Person A and Respondent were ordered to call the command, Respondent reported to the desk officer that it had all been a joke on Person A's part. But Respondent did not tell IAB that Person A had lied to the TEA to induce her to issue the summons.

The Department recommended a penalty of the forfeiture of 15 vacation days. The Court has noted Respondent's good work history with the Department. He appears to be a valued member of the 106 Precinct, noting in his testimony that he applied for the position of, and was assigned as, property officer owing to his skills with computer applications. The failure to report PersonA's misconduct was a very specific failure; Respondent did report the incident in a very general way, to the desk officer. No discernible harm came from his failure to notify IAB specifically that Person A had lied to the TEA.

Accordingly, the Court recommends that Respondent forfeit 10 vacation days as a penalty in this matter. See *Case No. 85775/09* (May 12, 2010) (one-and-a-half year probationary police officer with no prior disciplinary record received 10 days for failing to notify a supervisor, his commanding officer, supervisor or IAB that he was the respondent or defendant on an order of protection).

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOHN EATON
TAX REGISTRY NO. 932591
DISCIPLINARY CASE NO. 2010-1342

In his last three annual evaluations, Respondent received an overall rating of 4.0 "Highly Competent" in 2011, 3.5 "Highly Competent/Competent" in 2009, and 3.0 "Competent" in 2008. [redacted]

Respondent has not been the subject of any prior disciplinary adjudication.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials